
(2016) 12 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5918 of 2004

Late Shri Ajit Singh

APPELLANT

Vs

The Judge Labour Court

RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(g), Section 2(s)

Citation : (2017) 1 WLN 61

Hon'ble Judges : Mr. Sangeet Lodha, J.

Bench : Single Bench

Advocate : Mr. K.S. Yadav, Advocate, for the Petitioners; Mr. J. Gehlot, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Sangeet Lodha, J. - This petition is directed against award dated 20.9.03 passed by the Industrial Tribunal-cum-Labour Court, Sriganganagar, in Industrial Dispute Case No. 4/02, whereby while adjudicating the reference made by the State Government vide notification dated 21.3.02, it is held that the employer and workman relationship between the petitioner and the respondents is not established and therefore, the petitioner is not entitled for any relief.

2. The relevant facts are that the petitioner was engaged as Plant Operator/ Worker under the respondent-employer in the Milk Processing Plant situated at Hanumangarh vide oral order dated 1.3.96. The petitioner raised an industrial dispute before the Conciliation Officer for regularisation of his services and the benefits admissible to a permanent employee in the respondents' establishment. During the pendency of the proceedings before the Conciliation Officer, the respondent employer terminated the services of the petitioner w.e.f. 17.7.2000. Consequently, the petitioner preferred an application before the Labour Court under Section 33A of the Industrial Disputes Act, 1947 (for short "the Act"). The application was dismissed by the Labour Court vide order dated 5.9.01. In the meantime, on failure of the conciliation proceedings, the Conciliation Officer

submitted the failure report and the appropriate Government in its turn vide notification dated 21.3.02, referred the dispute for adjudication to the Labour Court in the following terms:

"<ß>D;k izkFkhZ Jfed Jh vftr dgekj ftldk izfrfuf/kRo ea=h Hkkjrh; etnwj la? k] yhyk pkSd Jh xaxkuxj }kjk fd;k x;k gSA Jh xaxkuxj ftyk nqX/k mRiknd lgkdkjh la?k fy0 guqekux<+ dk Jfed gS ;k Fkk\\ ;fn gka rks D;k mls fnukad 01-03-1996 ls fujUrj dk;Z djus ds mijUr Hkh LFkkbZ ?kksf"kr ugha fd;k tkuk mfpr ,oa oS/k gS\\ ;fn ugha rks izkFkhZ fdl vuqrks"k dks izkIr djus dk vf/kdkjh gS\\</ß"

3. The petitioner questioned the legality of order dated 5.9.01 by way of S.B.C.Writ Petition No. 2724/02, which was allowed by this court vide order dated 2.9.02 and the Labour Court was directed to consider the application of the petitioner under Section 33A as reference along with the reference for regularisation of the petitioner's services made by the State Government. Accordingly, the Labour Court consolidated the reference made by the appropriate Government and the application preferred by the petitioner under Section 33A of the Act as aforesaid.

4. The petitioner submitted his statement of claim, claiming that he was employed by the respondents as Plant Operator and Worker by oral order dated 1.3.96 and remained in continuous service upto 17.7.2000. The petitioner averred that he was being paid wages at the end of the month @ Rs.60/- per day after deducting the amount of Provident Fund (PF) and Employees State Insurance (ESI). The petitioner claimed that he was working under direct and effective control of the respondent-employer and just to avoid the liabilities under the labour laws he was shown to be a workman employed by the contractor. The petitioner averred that before terminating the services of the petitioner, the provisions of Section 25F, 25G and 25H of the Act and Rule 77 & 78 of Rajasthan Industrial Rules, 1958 were not complied with.

5. The respondents filed a counter to the claim taking the stand that the petitioner was never employed by them as workman and therefore, the dispute raised does not fall within the definition of "industrial dispute". The respondents claimed that from very inception, the petitioner was employee of the contractor firm M/s. Hanumangarh Security Agency, Hanumangarh Junction. According to the respondents, the contractor firm used to submit the bill of the wages of the labour as supplied and accordingly, the payment of wages was used to be made by the respondents. The stand of the respondents was that amount of PF and ESI was being deducted from the wages of the petitioner and deposited with the concerned department by the contractor firm.

6. The parties led their evidence. After due consideration of the evidence on record, the Labour Court arrived at the finding that the petitioner workman was employed by the contractor and the relationship of employer and workman is not established between the respondent and petitioner. The court opined that affidavit of the workman in his own favour without there being any documentary

evidence is not sufficient to establish the relationship of employer and workman. The Labour Court opined that on the basis of the evidence on record, it cannot be said that the contract between the respondent and contractor was a sham contract. Accordingly, the reference has been answered against the petitioner-workman. Hence, this petition.

7. Learned counsel appearing for the petitioner contended that it was the specific stand of the petitioner before the Labour Court that he worked under direct control and supervision of the respondent during the period from 1.3.96 to 17.7.2000. Learned counsel submitted that the petitioner had taken the specific stand that the entries regarding the petitioner's working on plant made in Refrigeration Logbooks, were duly signed by the petitioner and other plant operators. Learned counsel submitted that the specific stand of the petitioner was not controverted by the respondent employer. Learned counsel submitted that the petitioner had also moved an application seeking production of Refrigeration Logbooks of the period in question which were not produced by the respondents and the photo state copies thereof produced by the petitioner were ignored by the Labour Court. Learned counsel submitted that by virtue of amended provisions of Section 2 (g) & 2 (s) of the Industrial Dispute (Rajasthan Amendment) Act, 1958 ("Rajasthan Act No. 34 of 1958"), even if the petitioner was employed in the respondents' establishment through contractor, he shall be deemed to be employee of the respondents and thus, ignoring the said provisions, the finding arrived at by the Labour Court that the relationship of employer and workman is not established, is ex facie erroneous.

8. On the other hand, the counsel appearing for the respondents submitted that the finding arrived by the Labour Court after due consideration of evidence on record, cannot be said to be capricious or perverse so as to warrant interference by this court in exercise of its supervisory jurisdiction. Learned counsel would submit that there was no documentary evidence produced on record by the petitioner workman showing that he was directly employed by the respondents and thus, the Labour Court has committed no error in passing the impugned award holding that the relationship of employer and workman being not established, the petitioner workman is not entitled for any relief.

9. I have considered the rival submissions and perused the material on record.

10. It is to be noticed that the fact that through the petitioner was employed with the respondent through contractor, is not in dispute. It is pertinent to note that the petitioner had placed on record the photo state copies of the Refrigeration Logbooks (Ex.W/1 to W/51), containing the entries regarding his employment with the respondents, which were not controverted by the respondents by producing any evidence on record. Rather, the witness produced on behalf of the respondents Mr. S.P. Sidhu admitted that the said Logbooks were of the respondent department. It is also not disputed before this court that the petitioner had made an application before the Labour Court for summoning the original Refrigeration Logbooks, however, no order in this regard was passed by

the Labour Court. In the considered opinion of this court, the Labour Court has seriously erred in ignoring the documentary evidence on record existence whereof was not controverted by the respondents.

11. The petitioner is absolutely justified in contending that the Labour Court has seriously erred in ignoring the Rajasthan Amendment of the provisions of Section 2 (g) and 2 (s) of the Act of 1947. By way of Rajasthan Act No. 34 of 1958, the definition of "employer" as contained in clause (g) of Section 2 of the Act of 1947 stands expanded by inserting the following sub-clause (iii):

"(iii) where the owner of any industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily a part of the industry, the owner of the industry."

12. Likewise, while amending the definition of "workman", as contained in clause (s) of Section 2 of the Act of 1947 by way of Rajasthan Act No. 34 of 1958, after the words "employed in any industry", the words "by an employer or by a contractor in relation to the execution of his contract with such employer" has been inserted.

13. A conjoint reading of the provisions of Section 2(g) and 2(s) as amended by Rajasthan Act No. 34 of 1958, makes it abundantly clear that a person employed in any industry by a contractor in relation to execution of his contract with the principal employer shall be treated to be the workman employed by the Principal Employer and thus, even if the petitioner was employed through contractor in the respondents' establishment, he will be deemed to be workman employed by the respondents, the Principal Employer. In this view of the matter, the finding arrived at by the Labour Court that the relationship of employer and workman is not established between the respondents and the petitioner is ex facie contrary to law.

14. In view of the discussion above, the petition deserves to be allowed and the matter deserves to be remanded to the Labour Court to adjudicate the dispute regarding the legality of the termination of services of the petitioner and his entitlement for regularisation in service in accordance with law.

15. Accordingly, the writ petition is allowed. The impugned award dated 20.9.03 passed by the Industrial Tribunal-cum-Labour Court, Sriganganagar in Industrial Dispute Case No. 4/02 is set aside. The petitioner shall be treated to be the workman employed by the principal employer, the respondents herein. The matter is remanded to the Industrial Tribunal-cum-Labour Court, Sriganganagar to adjudicate the dispute regarding the legality of the termination of services of the petitioner and his entitlement for regularisation in service in accordance with law. No order as to costs.